

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

COREY DEWAYNE FINNEY,	:	
	:	
Petitioner,	:	
	:	
v.	:	Criminal Action No.
	:	5:02-CR-10-HL
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	Civil Action No.
	:	5:08-CV-90013-HL
	:	
	:	

ORDER

Before the Court is Petitioner's Motion for Leave to Appeal In Forma Pauperis (Doc. 66). Pursuant to 28 U.S.C. § 1915, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). In addition, Federal Rule of Appellate Procedure 24 provides:

a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

- (A) shows...the party's inability to pay or to give security for fees and costs;
- (B) claims an entitlement to redress; and
- (C) states the issues that the party intends to present on appeal.

FED. R. APP. P. 24(a)(1). Thus, a motion to proceed IFP on appeal should be granted only if the moving party shows an inability to pay, and the district court determines that the appeal is being brought in good faith.

In this case, Petitioner has demonstrated an inability to pay, but he is not entitled to proceed IFP on appeal because the appeal is not taken in good faith. In the context of 28 U.S.C. § 1915, good faith means that the litigant seeks the review of issues that are not frivolous from an objective standard. United States v. Wilson, 707 F. Supp. 1582, 1583 (M.D. Ga. 1989). Petitioner seeks appellate review of the Court's June 25, 2008, Order (Doc. 56) denying his § 2255 Petition (Doc. 51). Specifically, in his Motion to Proceed IFP on Appeal, Petitioner seeks review of the merits of his Petition. The Court, however, never addressed the merits. As explained in the June 25th Order, the Court does not have jurisdiction to consider his Petition because it is a second or successive petition. Petitioner has not cited, and the Court has been unable to find, any authority that would allow the Court to consider his second or successive § 2255 Petition. Accordingly, the Court concludes that Petitioner's appeal, which seeks review of the merits of his Petition, cannot be taken in good faith. His Motion to Proceed IFP on Appeal is denied.

SO ORDERED, this the 3rd day of October, 2008

s/ Hugh Lawson
HUGH LAWSON, Judge

dhc